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OFFICE OF PETITIONS

In re Application of
Sugihara et al.
Application No. 09/688,077
Filed: October 13, 2000
Atty Docket No. 369212000131

DECISION ON PETITION

This is a decision on the "Petition to Withdraw Notice of Omitted Item(s) in a Nonprovisional Application," filed January 11, 2001. The Office of Petition was recently forwarded the petition for a decision on the merits. The Office sincerely apologizes for any inconvenience.

On October 13, 2000, applicants deposited the application as a reissue application of U.S. Patent No. 5,563,067. On November 27, 2000, the Office of Initial Patent Examination mailed a Notice of Omitted Item(s) in a Nonprovisional Application, indicating that the Office accord the application a filing date; however, it appeared that page 8 of the specification (description and claims) had been omitted.¹

In response, on January 11, 2001, applicants filed the present petition. Applicants asserted that the requested page 8 of the specification did not exist. Applicants averred that on October 13, 2000, they filed a copy of U.S. Patent No. 5,563,067 in its entirety, which consisted of a cover page (including abstract), 7 pages of specification, and 12 pages of drawings.

On January 24, 2005, the examiner mailed a nonfinal Office action, stating that the disclosure was objected to because the specification deposited on October 13, 2000, was absent from the application. The examiner requested applicants to provide the USPTO with a copy of the missing specification deposited on October 13, 2000.

On February 23, 2005, applicants submitted a copy of U.S. Patent No. 5,563,067 (8 pages), which included the omitted pages of specification. Pursuant to 37 CFR 1.173(a): "An application for reissue must contain the entire specification, including the claims, and the drawings of the patent." "No new matter shall be introduced into the application." Id. As this is a reissue application, there is no

¹ The Notice of Omitted Item(s) incorrectly stated that page 8 of the specification was missing. Rather, the Notice should have indicated that the specification (i.e., 8 paged copy of the printed patent) was omitted on filing the reissue application.

question as to what applicants intended to file as the specification. The late submission of the specification does not raise any issue of new matter.

On petition under 37 CFR 1.182, the Director may excuse the delay in supplying the specification of the patent, and accord the application the requested filing date. Accordingly, the petition is **granted**.

The filing of the present petition was not necessitated by any error on the part of the USPTO. Therefore, the \$130.00 petition fee will be charged to Deposit Account No. 03-1952, as authorized.

The Office of Initial Patent Examination is directed to processing the present reissue application with a **filing date of October 13, 2000**, using the copy of specification supplied on February 23, 2005.

Any inquiries regarding this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
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